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10/674,512	09/30/2003	Brian Keith Wells	10121/03501	4114

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/674,512
Filing Date: September 30, 2003
Appellant(s): WELLS ET AL.

Oleg F. Kaplun
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 16, 2005 appealing from the Office action mailed May 11, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 4-5 and 15 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent Publication No. 2003/0069592 to Adams et al.

In regards to claim 1, Adams et al. disclose an apparatus for deployment of a hemostatic clip comprising: a handle; a shaft connecting to the distal portion of the handle; a clip assembly 1201 releasable coupled to the distal portion of the shaft, the clip having arms and a capsule 1204 which is capable of providing a first user feedback indicating the clip configuration; and a control wire 1207 including a ball connector 1202, the control wire extending from the handle assembly and coupled to the clip assembly by the ball connector to maintain the clip assembly coupled to the shaft, wherein the ball connector is detachable from the clip assembly to provide a second user feedback indicating separation of the clip assembly from the shaft (see. Figs 12a and 12b).

In regards to claim 2, Adams et al. disclose an apparatus for deployment of a hemostatic clip having a sheath 1206 which is movable, relative to control wire 1207, to a first and second position of covering and uncovering the clip (see Paragraph 0072 and 0084).

In regards to claim 4, Adams et al. disclose an apparatus for deployment of a hemostatic clip wherein the clip arms further comprise stop shoulders 1203 engaging a distal end of the capsule to provide the first user feedback (see Paragraph 0084).

In regards to claim 5, Adams et al. disclose an apparatus for deployment of a hemostatic clip wherein the decision configuration indicates a position of the control wire

beyond which further proximal movement of the control wire precludes return of the clip arms to an open configuration by a reversed movement of the control wire. Adams et al. disclose of the ability to repeatedly open and close the clip until the tissue pinching is accomplished (see paragraph 0014).

In regards to claim 15, Adams et al. disclose an apparatus for deployment of a hemostatic clip wherein the first feedback is inherently capable of providing both tactile and aural feedback (see Paragraph 0084).

Claims 3, 10-11 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication No. 2003/0069592 to Adams et al in view of U.S Patent No. 6,814,742 to Kimura et al.

In regards to claim 3, Adams et al. disclose an apparatus for deployment of a hemostatic clip comprising but is silent with respect to an over sheath stop engageable on the shaft to prevent movement of the over sheath. Kimura et al. teach of an analogous clipping apparatus having a stop tube 4 with protrusions 4a (see Fig. 1d). It would have been obvious to one skilled in the art at the time the invention was made to include a stop tube in the apparatus of Adams et al. in order to prevent further movement of the sheath once engaged, as taught by Kimura et al.

In regards to claim 10-11 and 17-18, Adams et al. disclose an apparatus for deployment of a hemostatic clip comprising but is silent with respect to the separation tension being at least 4 lbf. or less than 12 lbf. Kimura et al. teach of an analogous clipping apparatus wherein a tensile force of about 3kgf to 5kgf is applied to the linking

member 3, so the link member breaks at the fracture section 3d (see Col. 9, Lines 60-62). It would have been obvious to one skilled in the art at the time the invention was made to provide a separation tension of 3-5 kgf in the apparatus of Adams et al. as it provides a sufficient range for breakage as taught by Kimura et al.

(10) Response to Argument

Applicant states that Adams et al. fails to disclose "a control wire including a ball connector, the control wire extending from the handle assembly and coupled to the clip assembly by the ball connector to maintain the clip assembly coupled to the shaft, wherein the ball connector is detachable from the clip assembly to provide a second user feedback indicating separation of the clip assembly from the shaft". However, as broadly as claimed, the apparatus of Adams et al. provides a second user feedback to the user indicating separation of the clip assembly from the shaft as there will inherently be a lack of tension on the control wire once the clip assembly has been separated (see paragraph 0084). Therefore, the clip arms 1203 snapping into cutouts 1205 provide the first feedback indicating a decision configuration of the clip. The second feedback indicating clip separation from the shaft is provided by the lack of tension on the control wire.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Matthew J. Kasztejna
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